



Serial Number 09/918,697

PLI/7

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5 Charles R. Cypher
Charles R. Cypher, Reg. No. 41,694
Date of Deposit: April 1, 2002

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Brown

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

10 In re patent application of:

Inventor:	Peter C. Craig
Title:	Portable Pen for Shipping Livestock by Container Ship, Rail and Truck
15 Serial No.:	09/918,697
Examiner:	Price, Richard Thomas Jr.
Art unit:	3643
Attorney Docket No.:	PLI/7

20 Election of Species, 35 USC §121

Commissioner for Patents
Washington, D.C. 20231

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25 Sir:

The examiner has filed a Restriction Requirement in this application, in
response to papers filed by the Applicant on July 30, 2001.

30 The examiner is requiring that Applicant restrict this application to one
of two inventions.

According to the examiner, a first invention is defined by claims 1 – 24
and 29 – 33. According to the examiner, this first invention is the
subcombination of the pair.

35 According to the examiner, the second invention is defined by claims
25 – 28, and is the combination of the pair. According to the examiner,

1 "the combination as claimed does not require the particulars of the
subcombination as claimed for patentability...."

In order to be fully responsive to the examiner, the Applicant elects
the first invention as defined by the examiner for prosecution on the merits.

5

However, Applicant also respectfully requests that the Restriction
Requirement be withdrawn in light of the Preliminary Amendment that was
filed on July 30, 2001 as part of the Continuation Application.

10 Applicant respectfully requests that the Examiner enter the Preliminary
Amendment into the file, and then consider whether Restriction is still
proper. Applicant hereby requests examination of the application with the
preliminary amendments contained in the papers originally filed July 30,
2001, a copy of which is resubmitted herein.

15

Failing the examiner's entry of the amendment, Applicant respectfully
request the examiner provide Applicant with confirmation that this
Preliminary Amendment was never received by the United States Patent
20 Office, or if it was received, that the Examiner is disapproving the Preliminary
Amendment.

Applicant notes that according to 37 CFR §1.115 (a): "A preliminary
amendment is an amendment that is received in the Office (§1.6) on or
25 before the mail date of the first Office Action under §1.104." Applicant
further notes: "A preliminary amendment will be entered unless disapproved
by the Commissioner." 37 CFR §1.115 (b)(1). Finally, according to 37 CFR
§1.115(b)(2): "A preliminary amendment will not be disapproved if its ifled
no later than: (i) Three months from the filing date of an application under
30 §1.53(b)...."

Applicant is submitting herewith a copy of the Preliminary Amendment
as filed on July 30, 2001. The copy shows that the number of the "Express
Mail" mailing label was placed on the papers that constitute the
35 correspondence, prior to their being mailed by "Express Mail." Applicant is
also submitting herewith a copy of the Express Mail mailing label, showing

1 the "date in" for the papers transmitted. Applicant is also submitting a copy
of the Express Mail Certificate prepared by Applicant's attorney, attesting
that the papers were mailed on July 30, 2001. Finally, Applicant is also
submitting a copy of the Return Receipt Post Card submitted with the papers
5 that was returned to Applicant's attorney, after having been stamped as
having been received on July 30, 2001.

Applicant is also separately filing a conditional petition to the
Commissioner, to have the Preliminary Amendment deemed to have been
10 filed in the Office on the USPS deposit date of July 30, 2001, if the
Preliminary Amendment cannot be located in the files of the United States
Patent Office.

In the preliminary amendment, claims were canceled such that only
15 claims 1 — 4, 9, 13, 17, 21, 25 — 28 and 30 — 33 were to be pending in
the application.

More importantly, claim 25 was amended so that it became a
dependent claim, such that only claims 1, 2 and 30 were to be independent
20 claims.

As amended claim 25, calls for all of the specific limitations of claim
2. Amended claim 25 is not drawn to a separate panel, as originally claimed.

25 Furthermore, Applicant believes the combination described in
amended claim 25 does set forth the details and requires the particulars of
the subcombination of claim 2 as separately claimed.

Applicant is also confused by the examiner's statement that because a
30 pulley could be used with the apparatus of combination claims 25 — 28,
those combination claims do not require the particulars of subcombination
claim 2. The examiner made reference to the pulley being a different type of
tensioning member. Applicant notes that while claims 26 — 28 refer to a
tensioning member, no such element is required by or referred to by claim 2
35 as amended or originally filed. Applicant also notes that claim 25 as
amended or as originally filed does not refer to a tensioning member.

1 Finally, Applicant agrees with the examiner that the subcombination
has separate utility without the specific panels of claim 25.

5 Applicant respectfully requests further Examination of this application.

The undersigned wishes to state that if the Examiner has questions
about this response, the undersigned would be most happy to try to answer
them on the telephone.

Respectfully submitted,

10

Reg. No. 41,694

15 Date: April 1, 2002

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